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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,452	04/12/2001	Randall Allen Vogel	AD6728 US NA	3330

23906 7590 10/02/2002

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WILMINGTON, DE 19805

EXAMINER

JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 10/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/833,452	VOGEL ET AL.	
	Examiner	Art Unit	
	Monique R Jackson	1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-53 is/are pending in the application.

 4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) ☐ Claim(s) ____ is/are allowed.

6) ☐ Claim(s) ____ is/are rejected.

7) ☐ Claim(s) ____ is/are objected to.

8) ☒ Claim(s) 1-53 are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

 If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

 a) ☐ All b) ☐ Some * c) ☐ None of:

 1. ☐ Certified copies of the priority documents have been received.

 2. ☐ Certified copies of the priority documents have been received in Application No. ____.

 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

 * See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

 a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.	6) <input type="checkbox"/> Other: _____

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21 and 43-53, drawn to a multilayer composite, classified in class 428, subclass 515.
 - II. Claims 22-32, drawn to an injection molding method, classified in class 264, subclass 328.
 - III. Claims 33-42, drawn to a thermoforming method, classified in class 264, subclass 313.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the composite can be formed by another and materially different process such as by casting in the absence of a mold.
3. Inventions III and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the composite can be formed by another and materially different process such as by casting in the absence of a mold.
4. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different

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functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are process inventions that have different modes of operation wherein Invention II utilizes a molten or liquid polymer to form the composite by injection molding while Invention III utilizes preformed structures in a thermoforming process.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. In addition to the above restriction requirement, if the Applicant elects Invention I, the Applicant is further requested to elect one species from the following patentably distinct species of the claimed invention with regards to the particular category (A, B, etc.):

A. A first coextruded layer material selected from the following distinct species:

- i. consisting essentially of ionomer
- ii. consisting essentially of ionomer-polyamide blend

B. A second coextruded layer material selected from the following distinct species:

- i. ionomer
- ii. ionomer-polyethylene blend
- iii. ionomer-polyamide blend
- iv. very low density polyethylene
- v. ethylene polar copolymer

6. If the Applicant elects Invention II, the Applicant is further requested to elect one species from the following patentably distinct species of the claimed invention with regards to the particular category (A, B, etc.):

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A. A first coextruded layer material selected from the following distinct species:

- i. consisting essentially of ionomer
- ii. consisting essentially of ionomer-polyamide blend

B. A second coextruded layer material selected from the following distinct species:

- i. ionomer
- ii. ionomer-polyethylene blend
- iii. ionomer-polyamide blend
- iv. very low density polyethylene
- v. ethylene acid copolymer
- vi. terpolymer ethylene acid acrylate
- vii. terpolymer ethylene-acrylate-glycidal methacrylate

C. A backfilling material selected from the following distinct species:

- i. thermoplastic polyolefins
- ii. polyesters
- iii. sheet molding compounds
- iv. acrylonitrile butyl styrene
- v. polyvinyl chloride
- vi. polystyrene
- vii. polyurethane
- viii. low density polyethylene
- ix. linear density polyethylene
- x. high density polyethylene

D. A polymeric tie layer material selected from the following distinct species:

- i. blends of polyethylene, ethylene/alpha-olefin and ethylene elastomer
- ii. ethylene vinyl acetate
- iii. ethylene (meth)acrylate
- iv. ethylene butyl acrylate
- v. polyethylene terephthalate
- vi. polyethylene terephthalate glycol copolymer
- vii. maleic anhydride modified polypropylene
- viii. copolymers containing anhydride grafts

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, an ionomeric material is generic for A, an ethylene polymeric material is generic for B, a polymeric backfilling material is generic for C, a tie layer is generic for D.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



mrj
September 30, 2002



Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700